

AO 120 (Rev. 3/04)

TO: Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>SOLICITOR</b>	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
	OCT 24 2007	

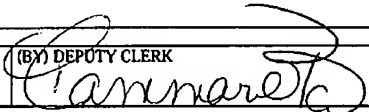
In Compliance with 35 U.S.C. § 292 and 37 C.F.R. § 41.104, you are hereby advised that a court action has been filed in the U.S. District Court Orlando Division on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 6:07-cv-1692-18KRS	DATE FILED 10/23/2007	U.S. DISTRICT COURT Orlando Division
PLAINTIFF GRIP POD SYSTEMS, INC. a Florida limited liability company,		DEFENDANT DA WUSTER, INC., a California corporation, KENT WU, an individual, AIRSPLAT.COM, a California business entity,
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,111,424	9/26/2006	Uspto for Fore Grip with Bipod
2 3,242,400	5/15/2007	GRIPPOD
3 3,244,947	5/22/2007	GRIP POD
4 T07000000347	3/12/2007	GRIP POD
5 T07000000348	3/12/2007	GRIP POD

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK <b>SHERYL L. LOESCH</b>	(BY) DEPUTY CLERK 	DATE 10/24/2007

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

(b) Awarding Plaintiff three times the amount of damages pursuant to 35 U.S.C. 284;

(c) Issuing an injunction permanently enjoining Defendant and its agents from any further infringement or violation of Plaintiff's patent;

(d) Declaring this case to be an exceptional one and awarding the Plaintiff its reasonable attorneys' fees and costs in bringing the action, under 35 U.S.C. 285.

(e) Awarding the Plaintiff pre-judgment and post-judgment interest on all damages at the maximum allowable rate.

(f) Awarding the Plaintiff such other further relief as this Court may deem appropriate.

## COUNT II

### Trademark Infringement

#### Violation of 15 U.S.C. §1051, et seq., 1114, and 1116-1118 inclusive

43. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

44. This is an action for trademark infringement and arises under the trademark laws of the United States, namely Title 15 of the United States Code and more particularly, 15 U.S.C. §1051, et seq., 15 U.S.C. 1114 and 15 U.S.C. 1116-1118 inclusive.

45. The Plaintiff uses and has used the trademarked names *GRIPPOD* and *GRIPPOD* in commerce, advertising, and marketing efforts in order to identify its vertical fore grip with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration business and products and to distinguish such business and products from businesses and products of others.

46. The names *GRIPPOD* and *GRIP POD* constitute protectable registered trademarks under federal law.

47. The trademarks *GRIPPOD* and *GRIP POD* are inherently distinctive or have achieved secondary meaning and said trademarks are primarily nonfunctional thereby rendering them worthy of the protection of the Lanham Act.

48. Defendants have used and continue to use in interstate commerce the names *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, or confusingly similar names or derivations thereof in commercial advertising, promotion, and identification of their businesses and products thereby misrepresenting the nature, characteristics, and qualities of their business and products.

49. Defendants' actions in adopting and using the names *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige* or confusingly similar names or derivations thereof were willful and wanton or with reckless disregard for the rights of Plaintiff.

50. Said actions have given rise to a likelihood of confusion within relevant channels of commerce of the respective parties since said use is confusing similar to Plaintiff's use of its registered trademarks.

51. Plaintiff has thus been damaged including but not limited to loss or impairment of business good will, as a result of Defendants' use of the names *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants and:

- a. Enjoin by injunction all Defendants who have infringed, are infringing, or are otherwise likely to infringe upon Plaintiff's trademarks, service marks, and trade names similar to *GRIPPOD* and *GRIP POD*, by restraining their use of the same or any marks or trade names similar thereto;
- b. Enjoin by injunction all Defendants who have utilized, are currently utilizing, or are otherwise likely to utilize any false designation of origin, false or misleading description of fact, or false or misleading representation of fact with respect to any aspect of the products or services at issue herein by restraining their use of the same or any mark or trade name similar to *GRIPPOD* and *GRIP POD* on businesses, products, or services in the stream of interstate commerce, in any commercial advertising, or in any other manner;
- c. Award Plaintiff all actual damages suffered by reason of Defendants' wrongful manufacture, use, display, sale, false designation of origin, reverse passing or palming off, and/or false advertising of Plaintiff's trademarks, service marks, and trade names similar to *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige* and all businesses, products, and services associated therewith;
- d. Award Plaintiff three times the amount found as actual damages pursuant to 15 U.S.C. § 1117(a);

- e. Award Plaintiff all profits of the Defendants derived from the wrongful manufacture, use, display, sale, false designation of origin, and/or false advertising of Plaintiff's trademarks, service marks, and trade names;
- f. Award Plaintiff the costs of this action;
- g. Award Plaintiff reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a);
- h. Order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendants bearing the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of this count, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and all other means of making same be delivered up and destroyed pursuant to 15 U.S.C. § 1118;
- i. Award Plaintiff all other relief that this Court may deem just and proper including pre- and post-judgment interest.

### COUNT III

#### **Unfair Competition and False Designation of Origin Violation of Lanham Act, § 1125(a) a/k/a Section 43(a)**

52. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

53. Plaintiff's marks *GRIPPOD* and *GRIP POD* constitute distinctive and famous trademarks pursuant to 15 U.S.C. § 1125(a).

54. Defendants have used and continue to use the names and words *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige* or confusingly similar names or derivations thereof to advertise and sell goods and services in interstate commerce and in a manner likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants to Plaintiff, or as to the origin, sponsorship, or approval of Defendants' business by Plaintiff.

55. All actions by Defendants described in the paragraph hereinabove above were and are willful and wanton or with reckless disregard for the rights of Plaintiff.

56. Consumers of the firearm accessory goods at issue herein are or likely would be confused as to the source of the goods advertised and sold by Defendants that contain said marks and names or similar versions thereof.

57. Plaintiff has been damaged as a result of Defendants' use of the names or words *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige* or confusingly similar names or derivations of Plaintiff's marks *GRIPPOD* and *GRIP POD*.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants and:

- a. Enjoin by injunction all Defendants who have diluted, are diluting, or are otherwise likely to dilute Plaintiff's trademarks, service marks, and trade names *GRIPPOD* and *GRIP POD* by restraining their use of the same or any mark or trade name similar thereto;

- b. Award Plaintiff all actual damages suffered by reason of Defendants' wrongful dilution of Plaintiff's trademarks, service marks, and trade names *GRIPPOD* and *GRIP POD*;
- c. Award Plaintiff three times the amount found as actual damages pursuant to 15 U.S.C. § 1117(a);
- d. Award Plaintiff all profits of the Defendants derived from the use and dilution of Plaintiff's trademarks, service marks, and trade names and all goods associated therewith;
- e. Award Plaintiff the costs of this action;
- f. Award Plaintiff a reasonable attorney's fee pursuant to 15 U.S.C. § 1117(a);
- g. Order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendants bearing the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of this count, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and all other means of making same be delivered up and destroyed pursuant to 15 U.S.C. § 1118;
- h. Award Plaintiff all other relief that this Court may deem just and proper including pre- and post-judgment interest.

#### COUNT IV

**False Advertising - Section 43(a)(1)(B) of the Lanham Act; 15 U.S.C. 1125(a)**

58. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

59. Defendants compete with Plaintiff for a common pool of customers with respect to the advertisement and sale of firearm accessory goods generally described as vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration in interstate commerce.

60. Defendants have advertised that their forward grips and, specifically, the vertical fore grip with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration named *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, are "TM" trademarks.

61. Defendants' advertisements are false.

62. Defendants' advertisements have deceived, or have the capacity to deceive, a substantial portion of the targeted common pool of customers.

63. Defendants' advertisements are material deceptions in that they are likely to influence purchasing decisions.

64. Defendants' deceptive advertisements have affected and impacted interstate commerce.

65. Plaintiff has been injured as a result of Defendants' deceptive advertisements thereby resulting in damages to Plaintiff.

66. Defendants' deceptive advertisements were done in bad faith and with malice or with reckless indifference to the rights of Plaintiff.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants and:

- a. Enjoin by injunction Defendants who have or are otherwise likely to circulate any false or misleading description of fact, or false or misleading representation of fact with respect to any aspect of the firearm accessory products or businesses at issue herein by restraining their use of the symbols "TM" and/or "®" or other words or symbols suggesting that their product names constitute trademarks in the stream of interstate commerce, in any advertising, or in any other manner;
- b. Award Plaintiff all actual damages suffered by reason of Defendants' false advertising;
- c. Award Plaintiff three times the amount found as actual damages pursuant to 15 U.S.C. § 1117(a);
- d. Award Plaintiff all profits of the Defendants derived from the false advertising of their vertical fore grip with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration products or businesses;
- e. Award Plaintiff the costs of this action;
- f. Award Plaintiff reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a);
- g. Order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendants bearing the words, terms, designations, descriptions, or representations that are the subject of this count, or any reproduction, copy, or colorable imitation thereof, and all

plates, molds, matrices, and all other means of making same be delivered up and destroyed pursuant to 15 U.S.C. § 1118;

h. Award Plaintiff all other relief that this Court may deem just and proper including pre- and post-judgment interest.

## **COUNT V**

### **UNFAIR PRACTICES IN IMPORT TRADE**

#### **Violation of 19 U.S.C. § 1337**

67. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1-32 of this Complaint as though set forth fully at length herein.

68. On information and belief, the Defendants imported models of vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration, into the United States.

69. On information and belief, the Defendants have offered for sale and sold various imported models of vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration after importation.

70. On information and belief, Defendants offered for sale and sold after importation models of vertical fore grip with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration, which infringes Plaintiff's valid and enforceable '424 Patent and federal and Florida State Registered Trademarks on *GRIPPOD* and *GRIP POD*.

71. Defendants' sales of imported vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod

configuration, that have infringed Plaintiff's patent and federal trademarks constitute unfair practices in import trade and have caused Plaintiff to suffer damages.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants and:

- (a) Declare a violation of 19 U.S.C. § 1337 (d) and direct the articles concerned that were imported by the Defendants to be excluded, barred, or removed from the United States of America.
- (b) Issue an injunction/cease and desist order preventing Defendants from further violations of 19 U.S.C. § 1337 (f).
- (c) Award Plaintiff all other relief that this Court may deem just and proper.

#### **COUNT VI**

##### **Florida Trademark Infringement Florida's Trademark Act at Section 495.151, Florida Statutes, et. seq.**

72. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

73. The trademarks and trade names *GRIPPOD* and *GRIP POD* are registered trademarks under Florida law which marks are identified respectively as Florida Trademark Registration Nos. T07000000347 and T07000000348 and are registered to Plaintiff.

74. Plaintiff has used the trademarks and trade names *GRIPPOD* and *GRIP POD* in the ordinary course of their business in Florida prior to the alleged infringing use thereof by the Defendants.

75. Defendants have used and continue to use the names and words *Grip Pod* or confusingly similar names and words to advertise and identify themselves as the source of

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FILED  
707 OCT 23 PM 1:45

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

GRIP POD SYSTEMS, LLC ,  
a Florida limited liability company,

CASE NO:

Plaintiff,

v.

6-07-CV-1692-ORL-18KRS

DA WUSTER, INC.,  
a California corporation,  
KENT WU,  
an individual,  
AIRSPLAT.COM,  
a California business entity,  
& JOHN DOES 1-50,

Defendants.

**COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL  
WITH INJUNCTIVE RELIEF SOUGHT**

COMES NOW Plaintiff, GRIP POD SYSTEMS LLC ("Plaintiff"), by and through its undersigned counsel, and for its Complaint against Defendants DA WUSTER, INC., KENT WU, AIRSPLAT.COM, and JOHN DOES 1-50 ("Defendants") hereby respectfully alleges as follows:

**PARTIES**

1. Plaintiff GRIP POD SYSTEMS LLC is a limited liability company organized under the laws of the state of Florida and maintains its principal place of business at 738 NATURE'S HAMMOCK DRIVE, JACKSONVILLE, FL 32259 and does business within this jurisdictional district and elsewhere throughout the United States.

vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration products in Florida.

76. There has been and continues to be competition between Plaintiff and Defendant with respect to the sale and advertisement of vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration products and businesses in Florida, and Defendants' use of the names and words *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, or similar names and words creates consumer confusion as to the source of the goods and services.

77. Plaintiff has been damaged as a result of Defendants' unauthorized use of the names and words *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige* or similar names and words which infringe upon Plaintiff's Florida state trademarks *GRIPPOD* and *GRIP POD*.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants and:

- a. Enjoin by injunction all Defendants who have infringed, are infringing, or are otherwise likely to infringe upon Plaintiff's trademarks and trade names *GRIPPOD* and *GRIP POD*, by restraining their use of the same or any mark, trade name, or form of advertisement similar thereto including but not limited to *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*;
- b. Award Plaintiff all damages suffered by reason of Defendants' wrongful manufacture, use, display, or sale of goods and services

bearing Plaintiff's trademarks and trade names or similar versions thereof;

c. Award Plaintiff all profits of the Defendants derived from the wrongful manufacture, use, display, or sale of goods and services bearing Plaintiff's trademarks and trade names or similar versions thereof;

d. Award Plaintiff reasonable attorney's fees and the costs of this action;

e. Award Plaintiff all other relief that this Court may deem just and proper including pre- and post-judgment interest and any enhanced, liquidated, exemplary, consequential, and compensatory damages available under Florida law for violation of Florida's trademark statute.

## COUNT VII

### Misleading Advertising - Fla. Stat. 817.41

78. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

79. Defendants have misleadingly advertised that their *Grip Pod, RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, Forward Grip scope products and businesses are their own "TM" trademarks.

80. Defendants made a misrepresentation of material fact; namely that their *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, Forward Grip products and businesses are their own "TM" trademarks.

81. Defendants knew or should have known of the falsity of the aforementioned misrepresentations.

82. Defendants intended that the misrepresentations would induce another to rely and act on them.

83. Defendants' misrepresentations were made with the intent or purpose, either directly or indirectly, of selling or disposing of property or services or to induce the public to enter into any obligation relating to such property or services.

84. Defendants' misrepresentations were made in bad faith and with malice or reckless indifference to the Plaintiff's and consumer's interests.

85. Plaintiff has suffered injury as a result of the misrepresentations.

**WHEREFORE**, Plaintiff respectfully requests that judgment be entered in favor of Plaintiff and against Defendants for misleading advertising in violation of Fla. Stat. 817.41 and that Plaintiff be awarded actual damages, costs, attorney's fees, and punitive damages pursuant to Fla. Stat. 817.41(6) and that an injunction be issued enjoining Defendants from disseminating the misleading advertising described hereinabove, plus such other and further relief the Court deems necessary and just.

#### **COUNT VIII**

##### **Unfair Competition – Florida Common Law**

86. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

87. Defendants have engaged in deceptive and fraudulent conduct by advertising that their *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, Forward Grip products and businesses are their own "TM" trademarks.

88. Defendants knew or should have known of the falsity of the aforementioned misrepresentations.

89. Defendants intended that the misrepresentations would induce others to rely and act on them.

90. Defendants' misrepresentations have caused or are likely to cause consumer confusion.

91. Defendants' misrepresentations were made in bad faith and with malice or reckless indifference to the Plaintiff's and consumer's interests.

92. Plaintiff has suffered injury as a result of the misrepresentations.

**WHEREFORE**, Plaintiff respectfully requests that judgment be entered in favor of Plaintiff and against Defendants for unfair competition in violation of Florida common law and that Plaintiff be awarded actual damages, costs, and punitive damages and that an injunction be issued enjoining Defendants from disseminating the misrepresentations described hereinabove, plus such other and further relief the Court deems necessary and just.

#### **COUNT IX**

##### **Deceptive and Unfair Trade Practices – Fla. Stat. 501.201, *et seq.***

93. Plaintiff repeats and realleges each and all of the allegations contained in paragraphs 1-32 of this pleading as though set forth fully at length herein.

94. Defendants have engaged in deceptive and unfair trade practices in a trade or commerce by advertising that their *Grip Pod*, *RIS Forward Grip AEG Rifle Bipod Black* and *RIS Forward Grip AEG Rifle Bipod Beige*, Forward Grip products and businesses are their own "TM" trademarks.

95. Defendants knew or should have known of the falsity of the aforementioned misrepresentations.

96. Defendants intended that the misrepresentations would induce others to rely and act on them.

97. Defendants' misrepresentations violate standards of unfairness and deception as set forth and interpreted by federal courts and/or violate 15 U.S.C. 1125(a) and Fla. Stat. 817.41, all of which proscribe unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

98. Defendants' conduct has misled the consuming public concerning the nature and legal status of their firearm accessory products and businesses to the consuming public's detriment and the detriment of Plaintiff's legitimate business enterprise.

**WHEREFORE**, Plaintiff respectfully requests that the Court (1) enter a declaratory judgment that Defendants' acts of misrepresentation in advertising and commerce constitute unfair and deceptive trade practices in violation of Fla. Stat. 501.201, *et seq.*, (2) award Plaintiff its attorney's fees and costs as provided under Fla. Stat. 501.2105 and make such award part of a judgment in favor of Plaintiff and against Defendants, (3) enter an injunction enjoining Defendants from disseminating the unfair and deceptive statements described hereinabove, and (4) grant such other and further relief the Court deems necessary and just.

DATED this 22 day of October 2007.

HOLLIFIELD LEGAL CENTRE

By: 

Travis R. Hollifield – Trial Counsel  
Florida Bar No.: 0094420  
147 E. Lyman Avenue – Suite C  
Winter Park, Florida 32789  
Telephone: (407) 599-9590  
Facsimile: (407) 599-9591  
Email: [trh@trhlaw.com](mailto:trh@trhlaw.com)

LAW OFFICES OF BRIAN S. STEINBERGER, P.A.  
Brian S. Steinberger, Esq.  
Florida Bar No: 43206  
101 Brevard Avenue  
Cocoa, Florida 33922  
Telephone: (321) 633-5080  
Facsimile: (321) 633-9322  
Email: [brianss@vol.com](mailto:brianss@vol.com)  
AS ATTORNEYS FOR PLAINTIFF

2. Upon information and belief, Defendants AIRSPLAT.COM is a business entity organized under the laws of the state of California with its principal place of business located at 11688 Clark Street, Arcadia, CA. 91006 and 1970 Santa Anita Avenue, South El Monte, CA. 91733; Defendant, DA WUSTER, INC. is a corporation organized under the laws of the state of California with its principal place of business at 1450 Old Mill Road, San Marino, CA. 91008 and KENT WU, an individual, who maintains addresses at 11688 Clark Street, Arcadia, CA. 91006; 1970 Santa Anita Avenue, South El Monte, CA. 91733; and 1450 Old Mill Road, San Marino, CA. 91008.

3. Plaintiff is currently unaware of the true name(s) and capacity(ies) of the Defendants sued as John Does 1-50 inclusive, and therefore sues said Defendants by said fictitious names. Plaintiff may seek leave to amend the complaint to show the true names and capacities of all Defendants when same have been ascertained.

#### **JURISDICTION AND VENUE**

4. This action arises under the Patent Laws of the United States, that is, Title 35 U.S. Code §271, *et seq.* and as such, this Court has jurisdiction over this cause pursuant to Title 28 U.S. Code § 1338 in that this case involves an infringement of a patent issued by the United States Patent and Trademark Office ("USPTO"). Moreover, all Defendants engage in a regular course of business in the Middle District of Florida, thereby giving this Court personal jurisdiction over all Defendants.

5. Venue is proper as to Defendants pursuant to 28 U.S.C. § 1391(d).

6. Venue is also proper in this District as to all Defendants pursuant to Title 28, U.S.C. § 1400(b) in that, upon information and belief, all Defendants have manufactured, distributed, sold, caused to be sold, or offered for sale, products which

infringe the Patent (as hereinafter defined) and which all parties knew or should have known were to be distributed or sold within this judicial district.

7. This action also seeks preliminary and permanent injunctive relief, declaratory relief under 28 U.S.C. §§2201 and 2202, and damages for trademark infringement under the laws of the United States; namely, Title 15 of the United States Code and more particularly 15 U.S.C. §1051, *et seq.*, 15 U.S.C. §1114, and 15 U.S.C. 1116-1118, inclusive; common law trademark infringement, false designation of origin, passing off, false advertising and unfair competition pursuant to Section 43(a) of The Lanham Act, 15 U.S.C. §1391 and 15 U.S.C. 1125(a); dilution of mark and injury to business reputation under Fla. Stat. 495.151, misleading advertising under Fla. Stat. 817.41, Deceptive and Unfair Trade Practices under Fla. Stat. 501.201, *et seq.*, and the Florida common law claim of unfair competition.

8. Defendants do business in Florida by (1) selling and shipping products to and within this State, District, and Division; (2) advertising products within this State, District, and Division; (3) soliciting business and orders within this State, District, and Division; and (4) deriving revenue from the sale of its products within this State, District, and Division without consent or license from Plaintiff.

9. Defendants have performed acts within this State, District, and Division which have resulted in damage to Plaintiff.

10. Defendants have committed acts in this District in violation of Plaintiff's exclusive rights under 15 U.S.C. §1115 thereby giving this Court personal jurisdiction over Defendants. Further, this court has jurisdiction pursuant to 15 U.S.C. §1121 and 28 U.S.C. §1332.

11. Venue is also proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b). Further, pursuant to Middle District Local Rule 1.02(c), venue is proper in the Orlando Division of the Middle District of Florida because the alleged acts giving rise to this claim have occurred in counties of which the Orlando Division is comprised as set forth in Middle District Local Rule 1.02(b)(3).

12. Subject matter jurisdiction of this Court is proper pursuant to 28 U.S.C. §1338.

### **GENERAL ALLEGATIONS**

13. Plaintiff is a Florida limited liability company operating a manufacturing and distribution business relating to a firearm accessory.

14. Defendants AIRSPLAT.COM and DA WUSTER, INC. are companies operating businesses that sell and distribute firearm accessories.

15. On September 26, 2006, United States Patent No. 7,111,424 (the "Patent or the '424 Patent"), was duly issued to one Joseph R. Moody of Jacksonville, Florida and Joseph D. Gaddini of Evans, Georgia by the USPTO for FORE GRIP WITH BIPOD which can be generally described as a vertical fore grip with concealed legs that deploy downward and extend beneath the fore grip into an expanded bipod configuration for use with firearms. The '424 Patent was filed in December 2, 2003. See Exhibit 1 attached.

16. By assignment from said Moody and Gaddini to said Plaintiff, GRIP POD SYSTEMS LLC, said GRIP POD SYSTEMS LLC currently holds all right, title and interest in the Patent.

17. At all times subsequent to September 26, 2006, Plaintiff, GRIP POD SYSTEMS LLC has been and is currently the owner of the Patent and all rights

appertaining thereto.

18. Defendants currently sell and distribute products for use with firearms which infringe said Patent of GRIP POD SYSTEMS LLC.

19. Plaintiff is the owner of United States Federal Trademark Registration Registration Number 3,242,400 for the mark *GRIPPOD* registered May 15, 2007 in International class 13 and assigned to Plaintiff. *See Exhibit 2 attached.*

20. Plaintiff is the owner of United States Federal Trademark Registration Number 3,244,947 for the mark *GRIP POD* registered May 22, 2007 in International class 13 and assigned to Plaintiff. *See Exhibit 3 attached.*

21. Plaintiff is the owner of State of Florida Trademark Registration Number Florida Registered Trademark No. T07000000347 for the mark *GRIPPOD* registered on March 12, 2007 in class 0013 and assigned to Plaintiff. *See Exhibit 4 attached.*

22. Plaintiff is owner of State of Florida Trademark Registration Number T07000000348 for the mark *GRIP POD* registered on March 12, 2007 in class 0013 and assigned to Plaintiff. *See Exhibit 5 attached.*

23. Since at least the date of issuance, the trademark registrations referred to in 19-22 above and attached as Exhibits 2 through 5 have been continuously used by Plaintiff in interstate commerce.

24. Since the date of issuance, the trademark registrations referred to in 19-22 above and attached as Exhibits 2 through 5, notice has been provided to the public that these marks are registered trademarks by the affixation of notice as provided for in 15 U.S.C. §1111.

25. On information and belief, the Defendants have been selling and distributing firearm accessory products known as Forward Grip Rifle Bipods since the September 26, 2006 issue date of Plaintiff's '424 patent and have been advertising and selling such instruments and devices within this District and throughout the United States using Plaintiff's '424 Patent technology without consent or license of Plaintiff.

26. On information and belief, the Defendants have been selling and distributing firearm accessory products known as Forward Grip Rifle Bipods and have been advertising and selling such instruments and devices within this District and throughout the United States using Plaintiff's trademarks or derivations thereof without consent or license of Plaintiff.

27. One or more of the Defendants have publicly stated in regard to their firearm accessory products that: "The Grip Pod is a revolutionary new vertical fore-grip integrated with a strong and stable bipod. The Grip Pod's legs deploy at the push of a button – instantly!"

28. One or more of the Defendants have publicly stated in regard to their firearm accessory products that: "We consider the Grip Pod to be an enhanced target acquisition system (ETAS)."

29. One or more of the Defendants have publicly stated in regard to their firearm accessory products that: "Using the Grip Pod an operator can go from a CQB position to a prone, and have a stable base for aimed firing in place before hitting the ground."

30. Defendants have no U.S. Patents for their firearm accessory products known as Forward Grip Rifle Bipods and as the Grip Pod.

31. Defendants have no federal trademark registrations and no state trademarks relating to their firearm accessory products known as Forward Grip Rifle Bipods and as the Grip Pod.

32. Plaintiff has complied with all conditions precedent to the bringing of this cause of action or such conditions have been waived or excused.

## **COUNT I**

### **PATENT INFRINGEMENT**

33. Plaintiff repeats and realleges each and all of the allegations contained in Paragraphs 1-32 of this Complaint as though set forth fully at length herein.

34. Defendants and/or its said subsidiaries and/or its said distributors and agents set forth in ¶2 and 3 above, make, use, sell, and import firearm accessories that can be described as vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration, as part of its production and sale of various models of fore grips including, but not limited to, the RIS Forward Grip AEG Rifle Bipod Black, the RIS Forward Grip AEG Rifle Bipod Beige, and Grip Pod.

35. The sales of vertical fore grips with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration are facilitated by the Defendants' distribution activity in this District and throughout the United States.

36. Defendants and/or its said subsidiaries and/or its said distributors and agents set forth above have also made, sold, offered for sale, imported and continue to so make and sell said models of the vertical fore grip with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration in this District and throughout the United States.

37. Defendants and/or its said subsidiaries and/or its said distributors and agents set forth above have, through said acts, infringed Plaintiff's rights of manufacture and sale.

38. In the absence of injunctive relief, Defendants will continue to violate the Patent Laws of the United States, and to infringe and violate the claims of the '424 Patent to the detriment and injury of the Plaintiff.

39. On information and belief, Defendants and/or its agents and subsidiaries proceeded with such infringing action subsequent to learning of GRIP POD SYSTEMS LLC's patent, therefore, this case is exceptional within the meaning of Title 35, U.S.C. 285, by virtue of Defendants' continuing, willful, and knowing infringement of the Plaintiff's '424 Patent.

40. All prerequisites and conditions precedent to suit have been satisfied or have occurred.

41. By reason of the above-described acts of Defendants, Plaintiff has suffered great harm, including, but not limited to, loss of royalties and past and prospective profits on their respective models of the vertical fore grip with concealed legs that deploy downward, and extend beneath the fore grip into an expanded bipod configuration.

42. As one consequence thereof, Plaintiff has retained the undersigned attorneys and has agreed to pay them reasonable fees for their services.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants by:

(a) Awarding the Plaintiff all economic compensatory damages attributable to the infringement including all actual damages suffered by reason of Defendant's wrongful manufacture, importation, sale, and offer of sale of products infringing upon the '424 Patent of Plaintiff and all profits of the Defendant derived therefrom;